

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ACCENT DELIGHT INTERNATIONAL LTD.
and XITRANS FINANCE LTD.,

Plaintiffs,

No. 18 Civ. 9011 (JMF)

-against-

SOTHEBY'S and SOTHEBY'S, INC.,

Defendants.

DECLARATION OF DANIEL J. KORNSTEIN

Daniel J. Kornstein, under penalty of perjury, pursuant to 28 U.S.C. § 1746, declares that the following is true and correct:

1. I am an attorney licensed to practice law in the State of New York and admitted to practice in this Court. I am a partner at Emery Celli Brinckerhoff & Abady LLP, counsel for Plaintiffs in this case. I make this declaration in opposition to Defendants' motion to dismiss or stay this action.

2. Based on our review of the documents produced in the § 1782 proceeding, of the 12 artworks sold by Sotheby's that are at issue in this case, only one was handled by Sotheby's Swiss office. By contrast, three of the artworks were handled by Sotheby's New York office, seven were handled by the London office, and one was handled by the Vienna office.

3. Three of the 12 artworks at issue in this case were physically in New York before Bouvier acquired them, and Sotheby's New York employees coordinated their transfer from Sotheby's New York office to Bouvier. Sotheby's New York office also arranged a viewing of *Salvator Mundi* at a Rybolovlev family apartment on Central Park West.

4. Sotheby's has a small office in Switzerland: Sotheby's website lists only 20 employees in Switzerland; by contrast, it lists hundreds of employees in New York.¹ According to the relevant page from Sotheby's website, a copy of which is attached as Exhibit K, Sotheby's Geneva office focuses on "bi-annual sales of jewellery and watches."

5. Sotheby's headquarters are in New York and it is traded on the New York Stock Exchange. Sotheby's has one chief executive officer, one worldwide general counsel, one global head of compliance, one director of communications—all based in its New York headquarters.

6. While Sotheby's has to date refused to produce its internal documents in the § 1782 proceedings (now pending on appeal before the Second Circuit Court of Appeals), it is likely that many of those internal documents will reflect communications between Valette and Sotheby's executive, compliance, and legal employees in New York to arrange the sale of these 12 artworks and later public resale of two of the artworks in New York and London. Those documents are likely to provide even further evidence of the New York nexus of this case and are likely to be in English.

7. Plaintiffs, the entities that bought the 12 artworks, are incorporated in the British Virgin Islands, not Switzerland.

8. Most of Plaintiffs' bank accounts that suffered the losses are in Cyprus, and a few transactions also involved Monaco bank accounts. The relevant accounts are not in Switzerland.

9. Bouvier did not live in Switzerland when any of the 12 artworks were sold. As Sotheby's has previously conceded to this Court, Bouvier left Switzerland and moved to Singapore in 2009. *See Declaration of Saverio Lembo (ECF No. 186-1), In re Application of Accent Delight Int'l*, No. 16-MC-125 (S.D.N.Y. Nov. 9, 2018), ¶ 3. All 12 artworks were sold in 2011 or later.

¹ *Our Team*, Sotheby's, <https://www.sothebys.com/en/about/our-team?q=&s=0> (last visited Feb. 13, 2019).

10. Dmitry Rybolovlev also did not live in Switzerland when any of the 12 artworks were sold. *See* Declaration of Saverio Lembo dated January 28, 2019 (“Lembo Decl.”) Ex. H at 16. As Sotheby’s admits, he moved to Monaco in January 2011. *Id.*

11. Of the key witnesses identified in Sotheby’s Statement of Claim, none reside in Switzerland. For example, contrary to Sotheby’s assertion, Mikhail Sazanov lives in France, not Switzerland.

12. The other Sotheby’s employees whom we know to have been involved in these sales are Sotheby’s Co-Chairman of Old Master Paintings Alexander Bell and Sotheby’s Chief Operating Officer Bruno Vinciguerra. According to the public report attached as Exhibit I, Vinciguerra is now the Executive Chairman of Bonhams and is based at the company’s New York headquarters. Sotheby’s itself concedes that “Bell, like Valette, is based in London and is employed by Sotheby’s UK.” Sotheby’s Br., ECF No. 45, at 10. Neither Bell or Vinciguerra is named as a party in the Swiss case. Lembo Decl. Ex. H at 1.

13. During the parties’ negotiations over an ESI protocol in the § 1782 proceedings, Sotheby’s identified five U.S.-based persons who would likely have relevant information about the relationship between Bouvier and Sotheby’s: Alena Grahn, Nita Khaitani, Kelly Pecore, Marina Phelan, and Bruno Vinciguerra. Attached as Exhibit G is an email from my colleague Douglas Lieb to Sotheby’s counsel memorializing Sotheby’s identification of these witnesses.

14. To the best of our knowledge, all five of these people live in the New York area. At least Grahn and Vinciguerra, and possibly Phelan, are former employees over whom Sotheby’s has no control and for whom compulsory process may be needed. Attached as Exhibit H is Grahn’s Facebook page, which appears to show that she no longer works for Sotheby’s.

Attached as Exhibit J is Phelan's LinkedIn page listing her as a "Former Assistant Vice President" at Sotheby's.

15. The New York-based sellers of da Vinci's *Salvator Mundi*—Warren Adelson, Alexander Parish, and Robert Simon—are also important witnesses. All are found in New York, and none are subject to compulsory process in Switzerland. The same is true of any New York-based Sotheby's employees who were present at the viewing. Attached as Exhibit V is a copy of the Court's October 5, 2016 Memorandum Opinion and Order in the § 1782 proceedings finding no dispute that Adelson, Parish, and Simon were found in the Southern District of New York.

16. Elena Rybolovleva filed for divorce in December 2008. Any involvement she had in Plaintiffs' dealings with Bouvier stopped on or before that date. All the transactions involving Sotheby's occurred in 2011 and later. It is therefore unlikely Ms. Rybolovleva has any knowledge of these transactions.

17. Sotheby's has already produced to Plaintiffs under § 1782 the "emails from Valette to Bouvier and Peretti" that they now argue will be found in "Switzerland or the UK, or both." Sotheby's Mem. 20.

18. The § 1782 documents produced so far hint at more connections to New York, including emails with the legal department in New York and solicitations of Jean-Marc Peretti by senior New York executives. That makes sense because Sotheby's worldwide headquarters is in New York, including its centralized legal and compliance departments.

19. The internal documents that Sotheby's has refused to produce are likely to be in English, because they are most likely exchanged between Valette (who works in the London office) and employees in the New York headquarters. In the § 1782 proceedings, Sotheby's produced several internal emails in English that Valette forwarded on to Bouvier. For instance, in

connection with the *Salvator Mundi* transaction, a senior Sotheby's official sent Valette an email, copying Bruno Vinciguerra and two other American Sotheby's officials, [REDACTED]

[REDACTED]. A copy of that email is attached as Exhibit N.

20. Based on our review of Plaintiffs' bank records, payments from Plaintiffs to Bouvier for at least five of the 12 artworks also passed through New York banks. The proceeds Bouvier got from reselling Modigliani's *Tête* from Plaintiffs' collection without their consent also came from New York banks.

21. Attached as Exhibit A is a copy of Plaintiffs' memorandum of law in support of their motion for leave to use documents in the United Kingdom, dated November 6, 2017.

22. Attached as Exhibit B is a copy of a letter from Marcus Asner to the Court, dated October 30, 2017, and filed at Dkt. #102 in the § 1782 proceedings, No. 16-MC-125.

23. Attached as Exhibit C is a copy of Samuel Valette's official bio on the Sotheby's website, downloaded from <https://www.sothbys.com/en/about/team/samuel-valette>.

24. Attached as Exhibit D is the complaint in *Sotheby's, Inc v. R.W. Chandler, LLC et al.*, No. 16-CV-9043 (S.D.N.Y.).

25. Attached as Exhibit E is the Declaration of Aimee Scillieri dated March 13, 2018, and filed at Dkt. #153 in the § 1782 proceedings, No. 16-MC-125.

26. Attached as Exhibit F is a news article by Allyssia Alleyne appearing on CNN on January 22, 2018, titled "Titian Painting Given to Charles I's Royal Plumber Goes Up for Auction," and downloaded from <https://www.cnn.com/style/article/titian-painting-king-charles-i-plumber-auction-sale/index.html>.

27. Exhibits G through K are introduced above.

28. Attached as Exhibit L is Sotheby's memorandum of law in opposition to Plaintiffs' second § 1782 petition, dated March 13, 2018.

29. Attached as Exhibit M is Yves Bouvier's memorandum of law in opposition to Plaintiffs' second § 1782 petition, dated March 13, 2018.

30. Exhibit N is introduced above.

31. Attached as Exhibit O is an email from Bruno Vinciguerra to Jean-Marc Peretti, dated January 9, 2015, copying Valette and another Sotheby's official.

32. Attached as Exhibit P is a news article by Richard Morgan in the October 3, 2018 *New York Post* titled "Russian Billionaire Claims Sotheby's Conned Him Out of \$1B," downloaded from <https://nypost.com/2018/10/03/russian-billionaire-claims-sothebys-conned-him-out-of-1b>.

33. Attached as Exhibit Q is a news article by Jane C. Timm appearing on NBC News on July 18, 2018, titled "NBC News Poll: Americans Turn More Anti-Russia Under Trump," downloaded from <https://www.nbcnews.com/politics/donald-trump/nbc-news-poll-american-attitudes-toward-russia-worsen-under-trump-n892196>.

34. Attached as Exhibit R is an article by Jacob Poushter for the Pew Research Center, dated October 4, 2018, titled "6 Charts On How Russians and Americans See Each Other," downloaded from <http://www.pewresearch.org/fact-tank/2018/10/04/6-charts-on-how-russians-and-americans-see-each-other>.

35. Attached as Exhibit S is a March 20, 2013 email from Marina Phelan to the da Vinci sellers, copying Alex Bell and other senior Sotheby's officials.

36. Attached as Exhibit T is Sotheby's Form 10-Q filed with the United States Securities and Exchange Commission for the quarterly period ending March 31, 2018.

37. Attached as Exhibit U is the Court's December 22, 2017 Memorandum Opinion and Order granting Plaintiffs' motion for leave to use discovery materials in the United Kingdom and Switzerland.

38. Exhibit V is introduced above.

39. I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 15, 2019
New York, New York

/s/
DANIEL J. KORNSTEIN